

## MEMORANDUM OF UNDERSTANDING ON RECONCILIATION BACKGROUND & FREQUENTLY ASKED QUESTIONS

FEBRUARY 3, 2017

### What is the MOU?

- The Métis Nation of Ontario (“MNO”) and the Ministry of Indigenous and Northern Affairs Canada (“INAC”), on behalf of the Government of Canada (“Canada”), have engaged in bilateral dialogue since the summer of 2016 on how to best develop a process to advance reconciliation between the Crown and Ontario Métis.
- This dialogue led to the development of the MNO-Canada Memorandum of Understanding on Advancing Reconciliation (the “MOU”), which was signed by MNO President Margaret Froh and Dr. Carolyn Bennett, Minister for INAC, at a signing ceremony in Toronto held on February 3<sup>rd</sup>, 2017. A copy of the MOU is available at [www.metisnation.org](http://www.metisnation.org).
- The MOU establishes a time-limited exploratory discussions table between the MNO and Canada with the goal of arriving at a mutually-agreeable framework agreement by September 2017. This framework agreement would establish a formal negotiations process between the parties to advance reconciliation based on mutually agreeable subject matters. (MOU, Articles 1 & 2)
- Importantly, the MOU, and the exploratory discussions table it creates, allows the MNO and Canada to have frank, confidential and without prejudice discussions on their respective positions with a view to arriving at a mutually agreeable process for formal negotiations. (MOU, Articles 11, 12 & 13)

### What led to the MOU?

- Since its creation in 1993, the MNO has advocated for and represented the rights, interests and ambitions of Métis within Ontario—as a part of the larger Métis Nation—through its democratically-elected governance structures at the local, regional and provincial levels.
- Section 35 of the *Constitution Act, 1982* recognizes the Métis as one of the “Aboriginal peoples of Canada” and constitutionally entrenches Métis rights and other claims against the Crown. The Supreme Court has held that reconciliation requires that these protected rights and claims be determined, recognized and respected through negotiations between the Crown and the Métis.



- Since 1982, despite Section 35's promise, governments have largely refused to formally negotiate with the Métis. This led to the Métis turning to the courts to seek justice. In a series of cases over the last 15 years—including the MNO-led watershed Métis rights decision in *Powley-2003* as well as *MMF-2013*, *Daniels-2016*—the Supreme Court has recognized Métis rights and claims and has urged that negotiations with Métis begin. These court decisions, along with Métis political action, have created increased pressure on governments to deal with the Métis.
- In April 2015, Doug Eyford, Canada's Ministerial Special Representative ("MSR") on the renewal of its comprehensive land claim policy recommended that negotiation processes to address Métis rights and claims be established.<sup>1</sup> This led to the appointment of Tom Isaac as a MSR appointed to specifically look at Métis Section 35 rights. In July 2016, Mr. Isaac's report was released and included recommendations on the need for negotiation processes with Métis on rights and claims.<sup>2</sup>
- In the last federal election, the Liberal Party made a series of policy commitments to the Métis Nation in its platform. In November 2016, consistent with those commitments, the Prime Minister mandated the Minister of Indigenous Affairs to "work, on a nation-to-nation basis, with the Métis Nation to advance reconciliation and renew the relationship, based on cooperation, respect for rights, our international obligations, and a commitment to end the status quo."<sup>3</sup>

## What are exploratory discussions?

- Within Canada's claims resolution processes, exploratory discussions are Stage 2 of a 6-Stage process. These 6 stages include: (1) the filing of a claim by an Indigenous community with Canada; (2) acceptance of that claim for exploratory discussions to see if a formal negotiations mandate can be developed; (3) developing a framework agreement that establishes a formal negotiation mandate; (4) negotiation of an Agreement-Principle ("AIP") that sets out key terms for an agreement; (5) negotiation and ratification of a final agreement; (6) implementation.
- In the past, Métis claims south of the 60<sup>th</sup> parallel never got past Stage 1. For example, in 1981, the Manitoba Métis Federation filed its land claim against Canada, which was summarily rejected by federal lawyers. After 32 years of litigation, the Supreme Court of Canada validated the MMF's claim in 2013. This led to the MMF and Canada signing a MOU in May 2016 and a framework agreement for formal negotiation in November 2016. The MNO seeks to secure its own framework agreement with Canada without having to spend decades and millions of dollars in the courts.

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<sup>1</sup> Available at: <https://www.aadnc-aandc.gc.ca/eng/1426169199009/1426169236218>.

<sup>2</sup> Available at: <http://www.aadnc-aandc.gc.ca/eng/1467641790303/1467641835266>.

<sup>3</sup> Available at: <http://pm.gc.ca/eng/minister-indigenous-and-northern-affairs-mandate-letter>.

## **Why is the MOU important?**

- As recognized in the above-noted MSR reports, Métis living south of the 60<sup>th</sup> parallel have been excluded from Canada’s claims negotiation processes for almost 50 years. Despite Métis inclusion in Section 35 and successive court victories, Canada has not amended its policies to include Métis. As a result, there have been no substantive negotiations on Métis self-government, rights and outstanding claims.
- The MOU provides the opportunity for the MNO and Canada to craft a regionally-tailored negotiations mandate that meets the unique rights, needs and aspirations of Ontario Métis, rather than being limited by existing federal claims policies that were designed for other Indigenous peoples and that other Indigenous groups often criticize as being frustrating and inflexible.
- Unlike previous federal policy approaches to dealing with Métis—which solely focused on programs and service delivery or the development of Métis institutions—these exploratory discussions will look at how substantive issues such as Métis self-government, rights and outstanding claims against the Crown can be negotiated.
- From the MNO’s perspective, this is a significant breakthrough because Canada has historically denied Métis self-government, rights and claims. These denials led to long and expensive litigation such as *Powley*, *MMF* and *Daniels*. The MNO hopes that further litigation can be avoided through negotiations.

## **Is Ontario involved in the exploratory discussions?**

- The MOU recognizes the importance of having the Province of Ontario involved in an overall process to advance reconciliation between the Crown and Ontario Métis. As such, the MOU provides for the province to become actively involved in the discussions. (MOU, Article 3)
- The Parties hope that the Province of Ontario will ultimately become a full participant in the process; however, advancing the discussions under the MOU is not dependent on provincial participation, since there are several subject matters that may not implicate provincial jurisdiction.

## **Does this MOU affect or limit Métis rights or claims?**

- No. The MOU simply commits the MNO and Canada to the exploratory discussions process with the goal of achieving a framework agreement for formal negotiations. No negotiations have begun yet. As outlined further below, the MNO will be engaging in province-wide consultations in the near future to begin a long and ongoing conversation with Ontario Métis on how to best advance Métis rights and claims as well as reconciliation.

## **How long is the exploratory discussions process?**

- The MOU sets out an 8 month exploratory discussions process, which can be extended if need be.

## What is reconciliation?

- The Supreme Court of Canada has held that reconciliation is a process guaranteed to Aboriginal peoples by Section 35 of *Constitution Act, 1982*. This process requires that Aboriginal rights and claims protected by Section 35 be determined, recognized and respected by governments through honourable negotiations leading to just and lasting settlements (i.e., modern day treaties or other constructive arrangements).
- While the term “reconciliation” is increasingly used to describe any initiative done with or for the benefit of Indigenous peoples, it is the MNO’s perspective that real reconciliation requires that substantive issues such as Métis rights, self-government, and outstanding claims against the Crown be dealt with. The preamble to the MOU sets out this perspective (i.e., that the discussions will address substantive rights and claims related issues).

## What happens next?

- Over the next 8 months, the MNO and Canada will be meeting regularly to advance the discussions and work contemplated under the MOU with the goal of arriving at a framework agreement that would establish a formal negotiations process. (MOU, Article 5)
- During this same period, the MNO will also be undertaking province-wide consultations with Ontario Métis through the MNO Commission on Métis Rights & Self-Government and other mechanisms to provide further information on the MOU and the exploratory discussions table as well as to receive guidance and input on the priority subject matters to be included in a framework agreement for future negotiations.
- The MNO will also be developing and implementing a comprehensive communication plan to ensure Ontario Métis are able to be informed and engaged and to provide input into the exploratory discussions processes as well as future negotiations. While this is just the beginning of what will likely be a lengthy and far-reaching process, the MNO wants to ensure everyone has an opportunity to become engaged.

## How do I get involved?

- In order to stay updated in developments, we encourage all MNO members to update their Registry files with their up-to-date address, email and phone numbers. Please contact the MNO Head Office at 1-855-798-1006 to update your file.
- As well, please regularly visit [www.metisnation.org](http://www.metisnation.org) or join our Facebook page at <https://www.facebook.com/Métis-Nation-of-Ontario-147602041992683/> or Twitter at [@MétisNationON](https://twitter.com/MétisNationON) in order to receive regular updates on further developments.